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10 ATTORNEYS FOR MELON CORP.

11 **UNITED STATES COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
SAN JOSE DIVISION

13 MELON CORP.
14 Plaintiff,

15 vs.

16 SILO TECHNOLOGIES, INC., *ET AL*,
17 Defendants.

Case No.: 5:24-cv-04781

Honorable Beth Labson Freeman

**DECLARATION OF GURDEEP BILLAN
IN SUPPORT OF MELON CORP.'S
NOTICE OF MOTION AND MOTION
FOR PRELIMINARY INJUNCTION AND
MOTION FOR EXPEDITED HEARING.**

Complaint Filed: August 6, 2024

Hearing Date: June 5, 2025

Time: 9 am

Courtroom: No. 3, Fifth Floor

Trial Date: Not Set

22
23 I, Gurdeep Billan, declare and state as follows:

24 1. I am the Executive Director of Melon Corp. ("*Plaintiff*" or "*Melon Corp.*") and, in
25 such position, I am authorized to make this Declaration. I am an adult and, based upon my own
26 personal knowledge, I am competent to provide this Declaration and to testify at trial regarding the
27 statements made in this Declaration. I file this Declaration in support of Melon Corp.'s Motion for
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Preliminary Injunction against Defendant Silo Technologies, Inc. (“*Defendant*” and “*Silo*”), and in support of Melon Corp.’s Motion for Expedited Hearing.

2. Melon Corp. seeks injunctive relief against Silo to enforce its interest in the statutory trust created under the Perishable Agricultural Commodities Act, 1930, *as amended*, 7 U.S.C. §§ 499a-499t (the “*PACA*”)(2013). The PACA trust assets at issue with respect to the instant Motion for Preliminary Injunction are in the custody and control of third-party customers of Melon Corp., each of whom are PACA Trustees (hereafter, the “*Customers/PACA Trustees*,” each identified in Exhibit A) charged with preserving and delivering such trust assets to and for the benefit of Melon Corp. as a properly perfected PACA trust beneficiary.

3. At all times relevant hereto, Melon Corp. operated its business under a valid United States Department of Agriculture (“*USDA*”) issued PACA License, which the USDA has identified as PACA License No. 20220765.

4. Melon Corp.’s Customers/PACA Trustees are as follows:

<u>Customer/PACA Trustee Name</u>	<u>PACA License No.</u>
Aldays Produce Inc.	20140482
Arizona Sky Produce Inc.	20101227
Costco Wholesale Corporation	19880396
Del Monte Fresh Produce (Texas) Inc.	19200309
Fordel Marketing LLC	20180314
Imok Global LLC	20180645
The Kroger Co.	19194690
The Midwest’s Best Produce Company	20021026
Mosby Brothers Farms Inc.	20060623
Mr. Felix Produce Sale LLC	20220618
JA Pacific Sales Company	20160477
Palmisano Brothers Produce Co., Inc. t/a Peddler’s Son Produce	19971434
Smart & Final Stores LLC	20080430
The Ichiban Companies Inc.	20220661
Tom Lange Company, Inc.	19711239
Walmart Inc.	20080266

1 5. Melon Corp.'s Customers/PACA Trustees are each PACA licensees and, therefore
2 each a "dealer" of Produce under PACA.

3 6. Additionally, each of Melon Corp.'s Customers/PACA Trustees are engaged in the
4 business of either buying and selling Produce in wholesale/jobbing quantities, or selling Produce
5 at retail, and, therefore, each is a "dealer" under PACA.

6 7. All Produce transactions between Melon Corp. and each of the Customers/PACA
7 Trustees involved interstate commerce in that all such Produce transactions involved, *inter alia*, the
8 movement of Produce on or along interstate highways and/or between two or more States.

9 8. Silo, at all relevant times hereto, was and is the holder of PACA License No.
10 20210463, and, therefore, is a "dealer" of Produce under PACA.

11 9. Melon Corp. sold to each of the Customers/PACA Trustees, and the
12 Customers/PACA Trustees bought from Melon Corp., perishable agricultural commodities
13 (hereinafter "*Produce*") including watermelon, cantaloupe, honeydew, strawberries, and other
14 Produce identified in the unpaid invoices attached hereto as Exhibit A. As such, the
15 Customers/PACA Trustees' Produce transactions, and each of them, with Melon Corp. involved
16 Produce the USDA expressly recognizes as "covered commodities" under PACA.

17 10. The transactions between Melon Corp. and each of the Customers/PACA Trustees
18 complied with PACA because the relevant payment terms were less than thirty (30) days.

19 11. The Customers/PACA Trustees were each obligated to promptly pay Melon Corp.
20 for the Produce listed in each unpaid invoice identified in Exhibit A within ten (10) days of its
21 receipt and acceptance of said Produce.

22 12. Melon Corp. sold Produce to the Customers/PACA Trustees as described in the
23 charts included as Exhibit A. In each instance, the Customers/PACA Trustees received and
24

accepted the Produce and no adjustments have been made on the invoice amount except as listed.

The charts use the following terms which shall have the described meaning:

- A **“Invoice Number”** refers to the number of the invoice under which Plaintiff sold the produce to the Customers/PACA Trustees.
- B **“Date of Invoice or Shipment.”** refers to the date which begins the payment term between that Plaintiff and the Customers/PACA Trustees.
- C **“Date Trust Notice Given”** refers to the date that Plaintiff served its invoice containing the statutory trust language on the Customers/PACA Trustees or, otherwise served its notice of intent to preserve trust benefits on the Customers/PACA Trustees.
- D **“Date Payment Due”** refers to the date payment was due based upon the payment term between that Plaintiff and the Customers/PACA Trustees.
- E **“No. of Days Past Due”** refers to the total number of days between the payment due date and the date identified in the Plaintiff’s Damages Charts.
- F **“Invoice Amount”** refers to the principal amount owed on each invoice regardless of whether the particular invoice amount qualifies for trust protection.
- G **“Accrued Interest”** refers to the amount of contractual interest which has accrued to date due to the Customers/PACA Trustees’ non-payment.
- H **“Payments Received”** refers to any partial payments received or other credits due to the Customers/PACA Trustees with regard to a specific unpaid Invoice Number.
- I **“Outstanding Balance”** refers to the sum of the Invoice Amount Due and Accrued Interest, less any partial payments received or credits due.
- J **“PACA Trust Amount”** refers to the amount owed and remaining unpaid which is entitled to trust protection due to that Plaintiff’s satisfaction of the applicable PACA regulations.

13. Melon Corp. has given the Customers/PACA Trustees credit for any and all payments against the full outstanding balances as stated in the charts included in the attached Exhibit A.

14. Each chart reflects the amount due and owing from the Customers/PACA Trustees to Melon Corp. as of the date listed in the chart.

15. Included in Exhibit A are true and accurate copies of examples of Melon Corp.’s unpaid invoices to each Customer/PACA Trustee.

16. As a PACA licensee, Melon Corp.’s unpaid invoices issued to each of the Customers/PACA Trustees contained the following statutory language preserving its beneficial interests in and to the Customers/PACA Trustees’ PACA trust assets:

1 The perishable agricultural commodities listed on this invoice are sold subject to the
2 statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities
3 Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim
4 over these commodities, all inventories of food or other products derived from these
5 commodities, and any receivables or proceeds from the sale of these commodities
6 until full payment is received.
7

8 17. Melon Corp. issued to its Customers/PACA Trustees, and each of the
9 Customers/PACA Trustees received, via e-mail, i-trade, and/or EDI, Melon Corp.'s unpaid
10 invoices identified in Exhibit A.

11 18. Melon Corp. delivered all invoices identified in Exhibit A to its Customers/PACA
12 Trustees within thirty (30) days of the Customers/PACA Trustees' receipt and acceptance of each
13 shipment of Produce corresponding to each unpaid invoice, and, therefore, all invoices were timely
14 delivered.
15

16 19. Melon Corp.'s Customers/PACA Trustees each acknowledged receipt of the
17 Produce identified on each of the unpaid invoices identified in Exhibit A by signing a bill of lading
18 or other proof of delivery upon its receipt and acceptance of the Produce. Attached hereto as
19 Exhibit B are true and correct copies of representative samples of the signed bills of lading or other
20 proofs of delivery Melon Corp.'s Customers/PACA Trustees' signed upon their receipt and
21 acceptance of Produce from Melon Corp.
22

23 20. Because each of Melon Corp.'s unpaid invoices involved Produce (i.e., highly
24 perishable commodities) time was of the essence with respect to the parties' respective
25 performance.
26

27 21. Therefore, Melon Corp. is a properly perfected PACA trust beneficiary in that
-- Melon Corp. fully complied with all of PACA's statutory mandates necessary to perfect its rights

1 as a PACA trust beneficiary. As a properly perfected PACA trust beneficiary, all the proceeds or
2 cash due to Melon Corp. in connection with Melon Corp.'s sale of Produce to the Customers/PACA
3 Trustees is held in trust by the Customers/PACA Trustees for the exclusive benefit of Melon Corp.
4 as an unpaid supplier of said Produce.

5
6 22. On or about July 30, 2024, however, Silo demanded diversion of, interfered with,
7 and prevented the lawful operation of the PACA Trusts, and directly caused dissipation thereof, by,
8 *inter alia*, contacting no less than sixteen (16) of Melon Corp. Customers/PACA Trustees and
9 directing them – under the threat of legal consequence – to divert, forward, transfer, and otherwise
10 pay all proceeds from Melon Corp.'s sale of Produce to Silo. This wrongful communication and
11 outreach to Melon Corp.'s Customers/PACA Trustees was based on Silo's alleged security interests
12 in and to Melon Corp.'s assets and resulted in no less than sixteen (16) of the Customers/PACA
13 Trustees refusing to pay Melon Corp.'s invoices for not less than \$1,487,281.10 of Produce sales,
14 causing dissipation of the PACA trust assets as to Melon Corp.

15
16 23. Defendant Silo knew or should have known that these funds were impressed with
17 the PACA Trust by virtue of Silo's knowledge of PACA (as a PACA licensee) and its access to,
18 knowledge about, and control over Melon Corp.'s accounts receivable and invoices.

19
20 24. As of the date and time of this Motion for Preliminary Injunction, Defendant Silo
21 has threatened and interfered with no less than sixteen (16) of Melon Corp.'s customers (i.e., the
22 Customers/PACA Trustees). For example, *see Exhibit C*, Silo Letters to Customers/PACA Trustees
23 Peddler's Son, Fordel Marketing, LLC, and Costco Wholesale. (Hereafter, these letters are
24 identified as the "*Improper Demand Letter(s)*.")

25
26 25. I know the foregoing to be true because each of the sixteen (16) Customers/PACA
27 Trustees, each of which are Melon Corp.'s Produce customers, communicated this fact to me,
-- including forwarding Silo's Improper Demand Letter in most instances.

1 26. According to the Customers/PACA Trustees and the Improper Demand Letters from
2 Silo itself, Silo directed the Customers/PACA Trustees – under the duress and threat of legal
3 consequence – to divert, forward, transfer, or otherwise pay all proceeds from any accounts
4 receivable due and owing to Melon Corp. (i.e., PACA Trust Assets) to Silo.

5
6 27. I further know the foregoing to be true because each Customer/PACA Trustee has
7 confirmed this to me, either by telephone, in person, and/or in writing, and several
8 Customers/PACA Trustees furnished to me the Improper Demand Letter.

9 28. Silo's Improper Demand Letters to the Customers/PACA Trustees have resulted in
10 no less than sixteen (16) of Melon Corp.'s Produce Customers/PACA Trustees refusing to make
11 full payment promptly with respect to Melon Corp.'s Produce related invoices. *See Exhibit A.*

12 29. Specifically, on or about July 30, 2024, Silo, through its attorney, Mark Edelson,
13 Esq., sent the Improper Demand Letters to the Customers/PACA Trustees, including some of
14 Melon Corp.'s most critical customers.

15
16 30. In the Improper Demand Letters, Silo made, *inter alia*, the following false
17 representations to the Customers/PACA Trustees:

18 “Please be advised that Melon defaulted on its obligations to Silo under the
19 Silo Agreements and is indebted to Silo for the Balance Owed.”

20 “Silo is aware that You possess accounts receivables due and owing to Melon
21 or are otherwise indebted to Melon. Under UCC § 9-406, after receipt of this
22 notice, “the account debtor may discharge its obligation by paying the
23 assignee and may not discharge the obligation by paying the assignor.” In
other words, You may only satisfy the debt that You owe Melon by paying
Silo.”

24 “You are hereby notified to immediately pay all monies in your possession
25 currently due and owing to Melon and all sums in your possession that would
26 be payable to Melon to Silo, care of the undersigned, until the Balance Owed
accrues.”

27 “Your failure to remit to Silo all sums owed to Melon up to the Balance Owed
will constitute a violation of the UCC and interference with the Silo
Agreements.”

1
2 *See Ex. C.*

3 31. Attached hereto as Exhibit C is a true and correct copy of Silo's Improper Demand
4 Letters.

5 32. According to the Improper Demand Letters, unless the Customers/PACA Trustees
6 diverted and paid to Silo every penny owed or owing to Melon Corp., the Customers/PACA
7 Trustees would have violated the UCC and committed a tort, subjecting them to liability and
8 potential suit by Silo.

9
10 33. In response to Silo's Improper Demand Letters, counsel for Melon Corp. wrote to
11 its the Customers/PACA Trustees and stated, in relevant part, the following:

12 Melon Corp. is the holder of PACA License No. 20220765 and
13 utilizes the invoice method (7 U.S.C. § 499e(c)(4)) to preserve its PACA trust
14 rights in and to every load of Produce it sells or otherwise transfers to its
customers.

15 In turn, PACA requires Melon Corp.'s Produce customers to hold
16 Melon Corp.'s Produce, and all related receivables and the proceeds from the
17 sale of said Produce in trust for the benefit of Melon Corp. This trust
18 obligation arises upon receipt of the Produce and continues until full payment
19 for said Produce is made to Melon Corp. (7 U.S.C. § 499e(c)(2)). Stated
20 differently, with respect to any funds due to Melon Corp. for its sale of
21 Produce to a customer on credit, PACA requires Melon Corp.'s customer to
hold those funds in trust for the benefit of Melon Corp. As a PACA Trustee,
it is unlawful for you to divert PACA trust assets to non-trust beneficiaries,
such as Silo, and payment to Silo will not discharge any obligation you have
to Melon Corp. under PACA's trust and unfair conduct provisions.

22 Importantly, the Produce you purchased and received from Melon
23 Corp. likewise includes Produce that Melon Corp. itself purchased from other
24 PACA trust beneficiaries. Therefore, Melon Corp. is also a PACA Trustee for
its Produce suppliers and, like you, it is obligated, as a fiduciary, to make full
and prompt payment to its produce sellers or producers.

25 *See Ex. D.*

26 34. Attached hereto as Exhibit D is a true and correct copy of Melon Corp.'s letter to
27 the Customers/PACA Trustees.
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1 35. As a direct and proximate result of Silo's issuance of its Improper Demand Letters,
2 Customers/PACA Trustees refused to pay Melon Corp.'s Produce related invoices in the current
3 aggregate amount of not less than \$1,487,281.81, inclusive of interest charges.

4 36. To this day, the Customers/PACA Trustees continue to withhold PACA Trust
5 Assets from Melon Corp.

6 37. The Customers/PACA Trustees have each communicated to me, either by
7 telephone, in person, or in writing, that the only reason that they are not paying the PACA Funds
8 to Melon Corp. in the normal course of business is because of the threat, uncertainty, and risk of
9 double liability created by Silo's Improper Demand Letters to the Customers/PACA Trustees. *See*
10 for example Exhibit E, Email from Corporate Counsel for Tom Lange Co., dated August 9, 2024,
11 stating that "[w]e have received your letter and it seems we are caught in the middle of a disputed
12 lien. I am sure you can understand our position of having no interest in taking on unnecessary legal
13 liability due to your dispute with Silo. As such, we will not be remitting payment to anyone until
14 we receive a Court Order or a resolution between Melon Corp and Silo that eliminates our risk of
15 paying the wrong party and having to double pay on these files.... In the meantime, we will simply
16 hold these payables until legal direction is given." *See also* in Exhibit E, Costco Wholesale Letter
17 to Melon Corp, explaining that "Costco is not in a position to adjudicate the merits" of the dispute
18 between Silo and Melon Corp., and asking both companies to "jointly direct Costco to whom to
19 remit the funds."

20 38. The Customers/PACA Trustees continue to withhold PACA Trust Assets from
21 Melon Corp. because of Silo's Improper Demand Letters, and are awaiting either consensus and
22 joint direction from both parties, or a Court order clarifying who is the proper recipient of the PACA
23 Funds.
24
25
26
27

1 39. Notwithstanding the time-sensitive nature of Melon Corp.'s contracts with the
2 Customers/PACA Trustees, Melon Corp. communicated with the Customers/PACA Trustees, both
3 orally and in writing, to provide notice that their failure or refusal to promptly pay the unpaid
4 invoices constated a violation of PACA and to provide the Customers/PACA Trustees an
5 opportunity to cure the same.
6

7 40. Following Silo's publication of its Improper Demand Letter to Melon Corp.'s
8 Customers/PACA Trustees, Melon Corp. spent months communicating with both Silo and its
9 Customers/PACA Trustees to negotiate an amicable and private resolution to the hardship Silo's
10 Improper Demand Letter caused.
11

12 41. Specifically, Melon Corp. communicated with its Customers/PACA Trustees in
13 writing and over the phone urging each of them to pay all Produce related invoices promptly and
14 explaining how any refusal to pay Melon Corp. constituted a violation of PACA.

15 42. With respect to Silo, Melon Corp. demanded the retraction of its Improper Demand
16 Letter and, after Silo's refusal, Melon Corp. proposed settlement terms that included Melon Corp.'s
17 voluntary dismissal of certain claims in exchange for Silo's agreement to jointly direct the
18 Customers/PACA Trustees to release the PACA Funds to Melon Corp, which Silo ultimately
19 refused.
20

21 43. Silo's interference with the lawful operation of the Customers/PACA Trustees'
22 PACA trusts has deprived Melon Corp. of not less than \$1,487,281.81 in PACA Trust Assets,
23 inclusive of interest charges.

24 44. Silo's interference and improper threats have caused Melon Corp. extreme financial
25 distress with immediate and dire consequences. As a direct result of Silo's interference and refusal
26 to jointly direct the Customers/PACA Trustees to pay the PACA Funds to Melon Corp. in
27

1 compliance with federal law, Melon Corp. is now facing an immediate liquidity crisis that may
2 result in bankruptcy.

3 45. In fact, Melon Corp. has not been able to fully pay all creditors, including its third-
4 party suppliers who are PACA trust beneficiaries, and faces both regulatory and civil legal action.
5 To further explain, Melon Corp. is a corporate trustee of the PACA trust with respect to the Produce
6 it receives from its suppliers (meaning Melon Corp., like many Produce companies, is
7 simultaneously a PACA Beneficiary and a PACA Trustee). As a direct result, all of Melon Corp.'s
8 Produce related accounts receivable, the proceeds of Melon Corp.'s accounts receivable, and any
9 cash or funds commingled with the proceeds of Melon Corp.'s Produce related accounts receivable,
10 wherever they exist, are all impressed with the PACA trust, held for the exclusive benefit of the
11 PACA Beneficiaries, and subject to PACA's rules, regulations, and duties.
12

13 46. Melon Corp. is the corporate trustee of its PACA Trust Assets because: (i) it is the
14 holder of a license to buy and sell Produce, which the USDA issued to Melon Corp. and which
15 makes Melon Corp. a dealer of Produce under PACA; (ii) it is engaged in the business of buying
16 and selling wholesale quantities of Produce in interstate commerce, and; (iii) is legally obligated to
17 comply with PACA's trust and unfair conduct provisions (e.g., a duty to maintain its PACA Trust
18 Assets in a manner that insures they are both sufficient in amount and freely available to make full
19 payment promptly to its PACA trust beneficiaries, a duty to preserve PACA Trust Assets, a duty
20 not to dissipate PACA Trust Assets, etc.).
21

22 47. Based on the Customers/PACA Trustees' statements, they are presently prepared to
23 pay the funds to Melon Corp. as the PACA beneficiary as soon as they receive a joint letter of
24 direction or an order of Court providing such direction. *See, e.g., Ex. E.*
25

26 48. With each passing day, risk of the Customers/PACA Trustees' continued dissipation
27 of Melon Corp.'s PACA Trust Assets increases. Each dollar which is allowed to be paid out to non-
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1 trust creditors, such as the Customers/PACA Trustees' secured lenders, landlords, insurers, service
2 providers, or utilities, may irreparably deplete the PACA Trust and irreparably damage and
3 prejudice Melon Corp. as the PACA trust beneficiary.

4 49. Moreover, the Customers/PACA Trustees' continued failure or refusal to pay the
5 PACA Funds to Melon Corp. in the ordinary course of business, as required by PACA, has resulted
6 in Melon Corp.'s inability to maintain its PACA trust assets in a manner sufficient to pay its PACA
7 trust beneficiaries and, in fact, Melon Corp. owes substantial sums to its unpaid suppliers of
8 Produce for PACA trust protected transactions.

10 50. Silo's blatant interference with Melon Corp.'s beneficial interest in and to the PACA
11 Funds has forced Melon Corp. and its principals to deplete their assets, terminate employees, and
12 otherwise significantly downsize its operations.

14 51. Based on my over 15 years of experience in the operation of a Produce seller and in
15 the Produce business in general, I have found that when a Produce buyer refuses to pay a Produce
16 seller for several months, it has inevitably led to dissipation of the PACA trust.

17 52. The Court's assistance is critical in preventing the financial ruin of Melon Corp. and
18 substantial injury to all of Melon Corp.'s PACA trust beneficiaries.


19 53. Without the Court's intervention, Melon Corp. will be wholly unable to pay its
20 PACA trust beneficiaries and this may, in turn, will cause a cascading effect of non-payment to
21 other unpaid Produce sellers in the supply chain (e.g., Fordel Marketing), which PACA is intended
22 to prevent and protect.

24 54. Simply put, the foregoing risks a snowball of non-payments, defaults, litigation, and
25 potential bankruptcies, all of which will retard, delay, injure, and deteriorate the various PACA
26 trust assets.

1 55. Lastly, the improper acts of Silo have damaged and continue to damage Melon
2 Corp.'s commercial relationships and goodwill with the Customers/PACA Trustees (its primary
3 purchasing customers), and with Melon Corp.'s suppliers.

4 **I declare the above statements to be true and correct under penalty of perjury**
5 **as set forth in 28 U.S.C. § 1746(2).**

6 DATE: February 21, 2025

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9 
10 Gurdeep Billan